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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.S., a Person Coming Under the
Juvenile Court Law.

CONTRA COSTA COUNTY
CHILDREN & FAMILY SERVICES
BUREAU,

Plaintiff and Respondent

v.

A.S.,

Defendant and Appellant.

A155556

(Contra Costa County
Super. Ct. No. J1701201)

After declaring J.S. a dependent, the juvenile court ordered J.S.’s mother and foster mother to share educational decision-making rights for J.S. (See Welf. & Inst. Code, § 361.)¹ Mother appeals the educational rights order.

We conclude the court applied the wrong legal standard when it issued the educational rights order. For this reason, we reverse.

¹ Undesignated statutory references are to the Welfare and Institutions Code. Pursuant to section 361, subdivision (a)(1), a court may limit a parent’s ability to make educational decisions for a child who has been adjudged a dependent of the court. “The limitations may not exceed those necessary to protect the child.” When the court limits a parent’s education rights, it “shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child[.]”

FACTUAL AND PROCEDURAL BACKGROUND

We recite only those facts germane to the issues on appeal. A.S. (mother) has three children. In 2002, mother's parental rights as to two of the children were terminated. Mother's third child, J.S., was born in 2005.

Detention and Jurisdiction

In November 2017, the Contra Costa Children & Family Services Bureau (Bureau) filed, and later amended, a petition alleging J.S. came within section 300, subdivision (b) because mother's substance abuse and mental health issues impaired her ability to care for J.S. According to the Bureau, mother left J.S. with a family friend and had been gone "for weeks." J.S. was "not enrolled in school." J.S. told the Bureau she had not attended school for approximately two months. She wanted to attend a charter school in Berkeley but mother did not help her with the enrollment process.

Mother suffered from bipolar disorder, had a longstanding substance abuse problem, and had not had stable housing since 2016. Mother expressed a desire to participate in substance abuse treatment and acknowledged J.S. needed to attend school. Mother told the Bureau she loved J.S. and wanted her "to go to school and do well at school." The court detained J.S. and ordered supervised visitation.

The Bureau's disposition report urged the court to declare J.S. a dependent. J.S. was attending school regularly and, with the exception of one class, was maintaining passing grades. Mother was at a detoxification facility. Mother visited J.S.; during the visits, they had "good conversation and participated in activities together." The Bureau recommended the court bypass reunification services based on mother's failure to reunify with her older children (§ 361.5, subd. (b)(10)).

In mid-February 2018, J.S. left her placement. The court issued, and later recalled, a protective custody warrant for J.S., who was then placed in a new foster home. In early March, the Bureau updated the court on mother's progress and requested the court provide her reunification services. In mid-March, mother pled no contest to the allegations in the operative petition; the court sustained the allegations and adjudged J.S. a dependent.

Request to Change Educational Rights Holder

In April 2018, the Bureau asked the court to grant educational rights to J.S.'s foster mother. The Bureau's attorney noted that before the petition was filed, J.S. had "not been in school for over two months. . . . [W]e need someone [who] can actively engage in the child's education, and Mother was not able to avail herself or do that in the past." Counsel for J.S. argued the request was "premature" because it was unclear how long J.S. would remain in her placement. Mother's attorney opposed the request, arguing there was no evidence limiting mother's educational rights would protect J.S. Mother's attorney requested a contested hearing on educational rights. The court observed: "unless I hear something further, I'm not inclined to strip Mother of educational rights"

Disposition

The disposition hearing was continued several times, until August 2018. In a June 2018 update, the Bureau indicated its desire for mother to continue to engage in reunification services. Until June 2018, J.S. had been doing well in school: "her grades were high, she was engaged in extracurriculars, and she was making friends." In anticipation of a change in placement, however, J.S. was "suspended from school due to a physical altercation that occurred in school." In an August 2018 update, the Bureau reported J.S. had returned to her previous placement.

Mother did not appear at the disposition hearing because she was in an inpatient substance abuse treatment program. The parties submitted on the Bureau's reports; the court adjudged J.S. a dependent and ordered reunification services. At the hearing, the Bureau renewed its request that foster mother "become the educational rights holder." According to the Bureau, mother had sabotaged placements for J.S. and declined to cooperate with care providers or the social worker. Mother's attorney objected, arguing it was unnecessary to limit mother's educational rights because J.S. "is in school [and mother] is in a program." The court set a hearing date, and commented on mother's failure to attend the dispositional hearing and her "behavior the last several weeks."

Education Rights Hearing

The Bureau's September 26, 2018 educational rights memorandum noted J.S. was "receiving straight A's in school, [was] a valued member of her school's cheerleading squad, and [was] developing positive relationships with her teammates." J.S. was enjoying visits with mother, who had completed the inpatient treatment program and was "focused on remaining sober." Mother was living in transitional housing and was scheduled to move into permanent housing.

At the September 26, 2018 hearing, counsel for the Bureau requested mother and foster mother share education rights. Referring to the disposition report, counsel noted J.S. had not been enrolled in school in November 2017 when the petition was filed, and that since that time, mother had "sabotaged" some of J.S.'s placements and "just hasn't been there." According to counsel for Bureau, J.S.'s education was not "at the forefront of mother's concern." Counsel opined mother should not hold educational rights "by herself" because she had failed to ensure J.S. attended school "in the past."²

Mother opposed the request. Her attorney argued "mother [should] . . . continue to hold educational rights." According to counsel, there was no need to limit or "restrict [mother's] educational rights at this point, and . . . this request to share educational rights is a restriction on her rights This is not necessary . . . to protect [J.S.], which is required under Section 361. [J.S.] is enrolled in school, excelling academically, is participating in extracurricular [activities]."

Mother's attorney noted there was no evidence mother was "blocking or precluding [J.S.] from receiving appropriate educational services," and emphasized mother was making progress on her case plan and was willing to handle any education-related issues. According to mother's attorney, the Bureau's information was outdated, and the purported need to limit mother's educational rights was speculative.

² J.S.'s attorney urged the court to appoint foster mother as the sole educational rights holder because having shared education rights "would create a situation where there would be conflict and that's the last thing that anybody needs."

The court described the Bureau’s request for mother and foster mother to share educational rights as “unusual,” and noted the issue was whether “there is a basis to have . . . mother share her educational rights with” J.S.’s foster mother. It briefly described the history of the case, noting mother had made progress in substance abuse treatment, and that she knew “education is important.” The court observed J.S. was thriving in her placement and excelling at school. Then the court opined it was “important to have a shared educational rights mechanism for the mother and the foster mother. I don’t honestly think this is depriving the mother or stripping her of her rights.” The court ordered educational rights “be shared. [Mother] is going to be entitled to be at all the meetings and have all of the required notice,” and mother would have “the ultimate say.” It cautioned the order was “subject to change” if J.S.’s educational needs were not being met, or if there was “conflict with the foster mother” regarding education-related issues.

On Judicial Council form JV–535 (order designating educational rights holder), the court listed mother and foster mother as education rights holders under box number 1. It checked box 6a, indicating mother “retained” the right to make educational decisions for J.S. Next to box 6a, the court handwrote mother’s education rights were “shared with foster mother.” The minute order states: “The court grants the request for Shared Educational Rights—to be shared with the Foster Parent. Mother has the ultimate decision/final say subject to: Mother’s availability (i.e. Mother must make herself available when important educational decisions need to be made), or there is a conflict between Mother and the Foster parent.”

DISCUSSION

I.

Statutory Scheme

To place the issues in context, we review the statutory scheme governing a parent’s right to make educational decisions for a dependent child. “Parents have a constitutionally protected liberty interest in directing their children’s education. [Citations.] However, when a child is a dependent . . . , a court may limit a parent’s

ability to make educational decisions on the child’s behalf.” (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1276.)

Section 319 governs limitations on a parent’s education rights from detention until the child is adjudged a dependent or the court dismisses the petition. (§ 319, subd. (j)(1).) Section 361 applies after a child has been adjudged a dependent of the court. (See §§ 361, 319, subd. (j)(4).) A court may limit a parent’s educational decision-making rights for a dependent child “[i]f necessary to protect [the] child.” (Cal. Rules of Court, rule 5.649(a);³ see also rule 5.695(b)(3).) Any limitations on the parent’s education rights “shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child.” (§ 361, subd. (a)(1).)

If the court limits the parent’s education rights over a dependent child, “the court shall at the same time appoint a responsible adult to make educational . . . services decisions.” (§ 361, subds. (a)(1), (a)(3); see also *In re Samuel G.* (2009) 174 Cal.App.4th 502, 510.) “ ‘Educational rights holder’ means the adult identified or appointed by the court to make educational . . . decisions” for the child. (Rule 5.502(13).) This educational rights holder “acts as and holds the rights of the parent or guardian with respect to all decisions regarding the child’s education” (Rule 5.650(f)(1)) and “is responsible for protecting the child’s rights and interests with respect to educational . . . services[.]” (Advisory Com. com., 23 pt. 2 West’s Ann. Codes, Rules (2017 ed.) foll. rule 5.650, p. 749.)

II.

The Education Rights Order Must be Reversed

As stated above, when adjudging a child a dependent, the juvenile court must determine whether “it is necessary to limit the [parent’s] rights” to make education

³ All rule references are to the California Rules of Court. If the court limits a parent’s educational rights, it must follow the procedures in rules 5.649 to 5.651. “The court must identify the educational rights holder for the child on form JV–535 at each hearing in a dependency . . . proceeding. Unless his or her rights have been limited by the court . . . , the parent or guardian holds the educational . . . decisionmaking rights for his or her child.” (Rule 5.649.)

decisions for the dependent child. (Rule 5.695(b)(3).) Limitations on the parent’s education rights “may not exceed those necessary to protect the child.” (§ 361, subd. (a)(1).) We review an order limiting a parent’s educational rights for abuse of discretion. (*In re R.W.*, *supra*, 172 Cal.App.4th at p. 1277.) “[A] court abuses its discretion when it applies incorrect legal standards.” (*In re Shannon M.* (2013) 221 Cal.App.4th 282, 289.)

The court applied the incorrect legal standard here. At the educational rights hearing, the court did not consider whether limiting mother’s educational rights was necessary to protect J.S. Instead, the court framed the issue as whether “there is a basis to have . . . mother share her educational rights with” J.S.’s foster mother. The pertinent question was not whether there was a basis for the court to order shared decision-making, but whether limiting mother’s education rights was necessary to protect J.S. (§ 361, subd. (a)(1).)⁴

Where the source of a court’s “discretion is statutory, we measure the trial court’s exercise of judicial discretion ‘against the general rules of law and . . . against the specific law that grants the discretion.’ [Citation.] ‘If the court’s decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law. [Citation.] Therefore, a discretionary order based on an application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion and is subject to reversal.’ [Citation.] Simply stated, ‘an abuse of discretion arises if the trial court based its

⁴ The evidence recited by the court at the hearing suggests the order was not necessary to protect J.S. The court observed mother was making progress toward attaining sobriety, and that mother knew J.S.’s education was important. J.S. was excelling at school and thriving in her current placement. Also before the court was evidence that mother wanted J.S. to attend school and do well there. Moreover, the court’s comment that the order was “subject to change” if J.S.’s educational needs were not being met implies J.S.’s needs *were being met*. And while the court ordered education rights to be shared, it gave mother the “ultimate say” in the absence of a conflict with foster mother, suggesting the court may have not believed it was necessary to strip mother of her educational decision-making rights.

decision on impermissible factors [citation] or on an incorrect legal standard.’ ” (*Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 709.)

Because the court used the wrong legal standard, the educational rights order must be reversed. (See *Shoen v. Zacarias* (2019) 33 Cal.App.5th 1112, 1125; *Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1493.) While we do not reach mother’s other challenges to the order, we question whether section 361 authorizes a court to order a parent and foster parent to share education rights.⁵

DISPOSITION

The September 26, 2018 education rights order is reversed and the matter is remanded for further proceedings consistent with this opinion.

⁵ Regardless of whether a sharing arrangement is authorized by statute, the terms of the order here are problematic. Mother is the final decision-maker unless “there is a conflict between Mother and the Foster parent.” Logically, this makes foster mother the ultimate decision-maker. It is also a recipe for conflict.

Jones, P.J.

WE CONCUR:

Simons, J.

Burns, J.

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